

CHAPTER 437B
REGULATION OF MOTOR VEHICLE REPAIRS

SECTION

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§437B-1 Definitions. As used in this chapter:
"Board" means the motor vehicle repair industry board.

"Certified mechanic" is a motor vehicle mechanic who has successfully passed the certification tests in any or all of the certification specialties set forth in this chapter.

"Chlorofluorocarbon" or "CFC" means any member of the family of substances containing carbon, fluorine, and chlorine, including, without limitation, those compounds known as CFC-11, CFC-12, CFC-13, CFC-14, CFC-113, CFC-114, CFC-115, CFC-116, CFC-500, CFC-502, and CFC-503, and any combination or mixture containing any of these chlorofluorocarbon compounds.

"Crash parts" means motor vehicle replacement parts, either sheet metal or plastic, which constitute the visible exterior of the vehicle, including inner and outer panels, and which are repaired or replaced as the result of a collision.

"Department" means the department of commerce and consumer affairs.

"Hydrochlorofluorocarbon" or "HCFC" means any member of the family of substances containing hydrogen, carbon, fluorine, and chlorine, including, without limitation, those compounds known as HCFC-22 and HCFC-123, and any combination or mixture containing any of these hydrochlorofluorocarbon compounds.

"Licensed mechanic" means a motor vehicle mechanic who has been licensed in accordance with this chapter.

"Mobile air conditioner" means an air conditioner designed for installation in a motor vehicle.

"Motor vehicle" means any passenger car, truck, truck tractor, motorcycle, or motor scooter, as defined in section 286-2, and the integral parts thereof.

"Motor vehicle mechanic" means any person whether self-employed or employed by another, who, for compensation, engages in the diagnosis or repair of malfunctions of motor vehicles, and may be classified as "intermediate" or "journey worker" as the terms are commonly used in the motor vehicle repair industry.

"Motor vehicle mechanic helper" means any person who, for compensation, engages in the diagnosis or repair of malfunctions of motor vehicles under the supervision of a licensed motor vehicle mechanic.

"Motor vehicle repair dealer" means any person who is, or has in the person's employ, a motor vehicle mechanic licensed under this chapter and who, for compensation, engages in the business of diagnosing or repairing malfunctions of motor vehicles.

"Refrigerant recovery and recycling equipment" means a device used to recover and to purify CFCs for later reuse.

"Repair of motor vehicles" means all maintenance of and modifications and repairs to motor vehicles, including the rebuilding or restoring of rebuilt vehicles as defined in section 286-2, but excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades, and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing oil and air filters, and other minor services, which the board by rule determines may be performed by persons without the skills and knowledge required of motor vehicle mechanics and helpers. No service shall be designated as minor, for purposes of this section, if the board finds that performance of the service requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

§437B-2 Applicability of chapter. This chapter does not apply to:

- (1) Employees of the county, state, or federal governments when carrying out the functions of governmental employment; or
- (2) Employees of a commercial or business enterprise who engage in the repair of motor vehicles which are owned, maintained, and operated exclusively by such commercial or business enterprise and which are not leased or rented to others; provided that employees may voluntarily be licensed pursuant to this chapter.

§437B-3 Motor vehicle repair industry board. There shall be a motor vehicle repair industry board consisting of seven members. Three members of the board shall be persons connected with the motor vehicle repair industry and at least two of those members shall be motor vehicle mechanics licensed under this chapter. The remaining four members shall not be connected with the motor vehicle repair industry.

§437B-4 Powers and duties of board. In addition to any other powers and duties authorized by law, the board, in accordance with this chapter and chapter 91 shall:

- (1) Establish such qualifications for the licensing of motor vehicle repair dealers and motor vehicle mechanics as may be necessary for the welfare of the public and the motor vehicle repair industry; provided that no person shall be licensed as a motor vehicle mechanic without first receiving certification as provided by this chapter;
- (2) Inquire into the practices and policies of the motor vehicle repair industry and make rules with respect to such practices and policies as may be deemed important and necessary by the board for the welfare of the public and the motor vehicle repair industry;
- (3) Contract and cooperate with the University of Hawaii in developing and administering the certification program provided for in this chapter;
- (4) Adopt, amend, and repeal such rules not inconsistent with this chapter, as the board deems appropriate for effectuating the purpose of this chapter and to ensure the welfare of the public;
- (5) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs; and
- (6) Enforce this chapter and rules adopted pursuant thereto.

§437B-5 REPEALED.

§437B-6 REPEALED.

§437B-7 License required. On or after January 1, 1976, it shall be unlawful for any person to engage in the repair of motor vehicles for compensation without being licensed as a motor vehicle repair dealer or motor vehicle mechanic in accordance with this chapter. Every motor vehicle repair dealer shall be a motor vehicle mechanic or shall have at least one motor vehicle mechanic in the dealer's employ. No motor vehicle mechanic shall engage in the repair of motor vehicles unless that person is also licensed as a motor vehicle repair dealer or unless that person is in the employ of a motor vehicle repair dealer.

§437B-7.5 Requirements for licensing of repair dealer; inspection. (a) Before a motor vehicle repair dealer license is granted by the board, the applicant shall establish that the applicant is or employs a full-time motor vehicle mechanic licensed with the board, and has a repair facility and the equipment necessary to properly perform work in the specialty or area of certification for which licensure is requested.

(b) The board may inspect an applicant's repair facility and equipment prior to licensing, and may conduct subsequent inspections of repair facilities to verify continued compliance with subsection (a).

§437B-8 Powers to classify and limit license. (a) The board shall adopt rules necessary to effect the classification of motor vehicle mechanics in a manner consistent with the certification program established by this chapter, and shall limit the motor vehicle repair activities of a licensee to those areas for which the licensee is certified or licensed.

(b) An applicant may make application for [licensure] in more than one classification if the applicant is certified for each classification and otherwise meets the qualification for [licensure] as prescribed by the board. If the applicant is licensed for more than one classification, the applicant shall pay the license fee but shall not be required to pay any additional license fee.

§437B-9 Fees: application; biennial renewals; license; restoration. (a) The fees for each application, original biennial license, and renewal for the motor vehicle repair dealer and the motor vehicle mechanic shall be as provided in rules adopted by the department pursuant to chapter 91. At the time of license renewal, each licensee shall submit a completed renewal application and all applicable fees, and shall demonstrate continued compliance with all license and certification requirements.

(b) Any motor vehicle repair dealer maintaining more than one motor vehicle repair facility shall separately license each repair facility, providing the name of the full-time motor vehicle mechanic for the facility, and pay a fee for each facility.

(c) The renewal fee shall be paid to the board on or before June 30 of each odd-numbered year. Failure, neglect, or refusal of any licensee to pay the biennial renewal fee before the date shall constitute a forfeiture of the license. Any license may be restored within one year after the date of forfeiture upon compliance with the renewal requirements and upon written application and the payment of the required fee plus an amount equal to fifty per cent thereof. Any licensee who fails to restore a license within one year from the date of forfeiture shall reapply for a license as a new applicant.

§437B-10 Certified repair dealer. A dealer is a licensed and certified motor vehicle repair dealer if not less than fifty per cent of the mechanics employed by the dealer on a full-time basis are licensed-certified mechanics.

§437B-11 Prohibited practices. In addition to any other grounds for disciplinary action authorized by law, the following acts or omissions related to the repair of motor vehicles shall be grounds for invoking the enforcement procedures of section 437B-12:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- (2) Causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (3) Failing or refusing to give to a customer a copy of any document requiring the customer's signature, as soon as the customer signs the document;
- (4) Any other conduct that constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or rules adopted pursuant to it;
- (7) Any wilful departure from or disregard of accepted practices or professional standards;
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (9) Having repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair dealer, mechanic, or apprentice demonstrates that the customer could not reasonably have been notified;
- (10) Conducting the business of motor vehicle repair in a place other than stated on the license except that mobile repair facilities may be permitted if the license so indicates;
- (11) Rebuilding or restoring of rebuilt vehicles as defined in section 286-2 in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year;
- (12) Subcontracting, recommending, or referring motor vehicle repair work to, or in any way assisting, a motor vehicle repair dealer or mechanic whose license or certification is not in full compliance with this chapter;
- (13) Failure to directly supervise a motor vehicle mechanic apprentice/trainee or motor vehicle mechanic helper;
- (14) Servicing mobile air conditioners without using refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated or was in use by the motor vehicle repair industry prior to December 31, 1989;
- (15) Performing service on any motor vehicle or mobile air conditioner after January 1, 1994, without successful completion of an appropriate training course

- in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated; and
- (16) Violating chapter 342C.

§437B-11.2 REPEALED.

§437B-11.3 Aiding or abetting. Aiding or abetting an unlicensed person to evade this chapter or knowingly combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade this chapter, shall be a misdemeanor.

§437B-11.4 REPEALED.

§437B-11.5 Advertising. No motor vehicle repair dealer shall advertise unless it holds a valid motor vehicle repair dealer license issued under this chapter. Advertisement includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or newspaper or magazine, or directory under the listing of motor vehicle repair dealer, or broadcasting by airwave transmission which relates to the motor vehicle repair business.

§437B-12 Enforcement. (a) In addition to any other actions authorized by law, in accordance with chapter 91, the board may fine, suspend, revoke, or refuse to renew the license of a motor vehicle repair dealer or mechanic for any violation of this chapter or rules adopted pursuant thereto. The board may also order restitution as provided in subsection (c).

(b) Any fine that is imposed shall be not less than \$100 nor more than \$2,500 for each violation.

(c) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle repair dealer or mechanic to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the maximum fine set forth in subsection (b).

(d) If a motor vehicle repair dealer operates more than one motor vehicle repair facility in this State, the board pursuant to subsection (a) may only revoke, suspend, or refuse to renew the license of the specific motor vehicle repair facility that has violated this chapter. The violation, or the action by the board, shall not affect in any manner the right of the motor vehicle repair dealer to operate the dealer's other motor vehicle repair facilities; provided that the board may suspend, revoke, or refuse to renew the license for all motor vehicle repair facilities operated in this State by a motor vehicle repair dealer upon a finding that the motor vehicle repair

dealer has, or is, engaged in a course of repeated and wilful violations of this chapter, or rules adopted pursuant thereto.

- (e) Each:
 - (1) Mobile air conditioner serviced without using refrigerant recovery and recycling equipment;
 - (2) Motor vehicle or mobile air conditioner serviced after January 1, 1994, without successful completion of an appropriate training course dealing with the recovery and recycling of CFC and HCFC refrigerants; and
 - (3) Violation of chapter 342C; constitutes a separate offense for which fines may be imposed under subsection (b).

[§437B-12.5] Cumulative penalties. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§437B-13 Invoices; supplying crash parts or used parts; customer's copy. All work done by a motor vehicle repair dealer, mechanic, or apprentice, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including the general excise tax, and shall state separately the tax, if any, applicable to parts and service work. If any crash, used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, crash, rebuilt, or reconditioned parts, the invoice shall clearly state that fact. One copy shall be given to the customer and one copy shall be retained by the motor vehicle repair dealer.

[§437B-14] Return of replaced parts; exceptions. Upon request of the customer at the time the work order is taken, the motor vehicle repair dealer, mechanic, or apprentice shall return replaced parts to the customer at the time of the completion of the work excepting such parts as may be exempt because of size, weight, or other similar factors from this requirement by rule of the board and excepting such parts as the motor vehicle repair dealer, mechanic, or apprentice is required to return to the manufacturer or distributor under a warranty arrangement. If the parts must be returned to the manufacturer or distributor, the dealer, mechanic, or apprentice at the time the work order is taken shall offer to show, and upon acceptance of the offer, shall show the parts to the customer upon completion of the work, except that the dealer shall not be required to show a replaced part when no charge is being made for the replacement part.

§437B-15 Estimate for labor and parts. (a) The motor vehicle repair dealer, mechanic, or apprentice shall give the customer a written estimated price for labor and parts necessary for a

specific job prior to commencement of the job. Such written estimated price need not be given if waived in writing by the customer. No charge in excess of fifteen per cent of the estimated price, if the estimated price is less than \$100, or ten per cent of the estimated price, if the estimated price is in excess of \$100, shall be charged for parts and labor supplied in excess of the estimated price, without the prior written or oral consent of the customer. Such consent shall be obtained at some time after it is determined that the estimated price is insufficient and before the labor not estimated is performed or the parts not estimated are supplied. This provision may be waived in writing by the customer, provided that such waiver by its terms shall be effective only after the dealer or mechanic has made reasonable efforts to contact the customer. The form and content of any waiver shall be as prescribed by rule of the board. Nothing in this section shall be construed as requiring a motor vehicle repair dealer, mechanic, or apprentice to give a written estimated price if the dealer, mechanic, or apprentice does not agree to perform the requested service. A reasonable fee may be charged for making the estimate.

(b) If any crash parts manufactured by anyone other than the original vehicle equipment manufacturer are to be supplied or installed, the estimate shall clearly state that fact and identify each of those crash parts. In identifying the crash parts which are not manufactured by the original vehicle equipment manufacturer, the motor vehicle repair dealer, mechanic, or apprentice may include information on any applicable manufacturer's warranty and information about the part's compliance with any certified testing program.

(c) No motor vehicle repair dealer, mechanic, or apprentice shall use crash parts which are not manufactured or supplied by the original vehicle equipment manufacturer unless the owner of the motor vehicle accepts the use of such parts and signs the estimate acknowledging the use and source of the crash parts.

[§437B-16] Records required; inspection. Each motor vehicle repair dealer shall maintain such records as are required by rules adopted by the board. The records shall be open for reasonable inspection by the board or other law enforcement officials. All such records shall be maintained for at least two years.

[§437B-17] Sign required concerning board; notice to customer. The board shall design and approve of a sign which shall be placed in all motor vehicle repair dealer locations in a place and manner conspicuous to the public. Such sign shall give notice that inquiries concerning service may be made to the board and shall contain the telephone number of the board. The sign shall also give notice that the customer is entitled to a return of replaced parts upon the customer's request therefor at the time the work order is taken.

§437B-18 REPEALED.

[§437B-19] Jurisdiction of circuit court; procedure. The circuit court of the judicial circuit in which any person carries on, or attempts to carry on, business as a motor vehicle repair

dealer or acts or holds oneself out as a motor vehicle mechanic or motor vehicle mechanic apprentice in violation of this chapter, or any rule made pursuant to this chapter, shall on application of the board, issue an injunction or other appropriate order restraining such conduct.

The proceedings under this section shall be governed by the Hawaii Rules of Civil Procedure, except that no undertaking shall be required, and the board shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

§437B-20 License condition precedent to lien. No person required to be licensed under this chapter shall have the benefit of any lien for labor or materials or the right to sue on a contract for motor vehicle repairs done by the person unless the person was licensed at the time the person performed the contract.

[§437B-21] Civil action. Nothing in this chapter shall prohibit the bringing of a civil action against a motor vehicle repair dealer, mechanic, or apprentice by an individual.

[§437B-22] Failure to comply with chapter; misdemeanor. Any person who fails to comply with the provisions of this chapter is guilty of a misdemeanor.

§437B-23 Certification program. (a) The board shall contract with the University of Hawaii to develop and administer a certification program for motor vehicle mechanics.

(b) The certification program shall provide for issuing a certificate to mechanics generally skilled in the repair of motor vehicles and to mechanics who specialize in certain areas of motor vehicle repair. A person may be certified as being generally skilled in the repair of motor vehicles, specially skilled in one or more areas of motor vehicle repair, or both generally and specially skilled. Each area shall be separately tested and certified. The program shall provide for apprenticeship leading to certification as a mechanic. The program may be an apprenticeship program registered with the department of labor and industrial relations in accordance with chapter 372. Nothing in this section or chapter shall prevent a student in a course leading to certification from repairing motor vehicles so long as the student is supervised by a mechanic.

(c) The certification test shall be approved by the board and if written, shall be given orally at the request of the person being tested. Each application for certification shall be accompanied by a nonrefundable examination fee as provided in rules adopted by the department pursuant to chapter 91.

(d) There shall be no limit on the number of times a person may apply for certification; provided that any person failing the examination must wait thirty days before retaking the test.

(e) All persons who take and pass the certification test shall be awarded a certificate which shall be posted in a prominent place at their place of business or employment and a patch which may be worn on clothing apparel. The University of Hawaii shall design and procure the certificate and patch.

§437B-23.5 Apprentices and helpers. It shall be unlawful for any motor vehicle mechanic apprentice/trainee or motor vehicle mechanic helper to assist a motor vehicle repair dealer or motor vehicle mechanic unless the apprentice or helper works under the direct supervision of a licensed or certified motor vehicle repair dealer or motor vehicle mechanic. All motor vehicle mechanic apprentices/trainees and motor vehicle helpers shall be assigned to and shall be the responsibility of a licensed or certified motor vehicle mechanic, provided that each licensed or certified mechanic shall have assigned to the mechanic not more than a total of five apprentices/trainees or helpers. In the event that a motor vehicle mechanic, who is assigned one or more motor vehicle mechanic apprentices/trainees or motor vehicle helpers, is terminated from employment, the motor vehicle repair dealer shall have thirty days to replace the motor vehicle mechanic in order to reassign the apprentices/trainees or helpers.

§437B-24 Certification required for mechanics prior to [licensure]. (a) Except as provided in subsection (b) below, every mechanic applying for [licensure] shall have passed the appropriate certification test provided for in this chapter.

(b) Notwithstanding any provision of this chapter, any person who has been engaged as a motor vehicle mechanic for a period of at least two years prior to January 1, 1976, and who has applied for [licensure] as a motor vehicle mechanic under this chapter on or before June 30, 1976, shall not be required to take the certification test prescribed in this chapter prior to [licensure].

§437B-25 REPEALED.

§437B-26 Bond required to work on salvaged, wrecked, or dismantled motor vehicles; forfeiture. (a) Any motor vehicle repair dealer desiring to engage in the business of restoring or rebuilding salvaged, wrecked, or dismantled vehicles shall submit to the board a performance bond, with corporate surety satisfactory to the board. The amount of the bond shall be not less than \$25,000 and the condition of the bond shall be the satisfactory rebuilding or restoration of salvaged, wrecked, or dismantled vehicles.

(b) When the board finds that a licensee has wilfully departed from or disregarded accepted practices of workmanship with respect to work performed under section 437B-11(11), the board may, in accordance with chapter 91, order the forfeiture to the State of the performance bond submitted under subsection (a).

(c) Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under this section is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license to be terminated, thereby forfeiting all license and biennial renewal fees. A licensee may, within fifteen calendar days after receipt of notification of the license termination, request an administrative hearing pursuant to chapter 91 to review the termination.